

IN THE UNITED STATES DISTRICT COURT  
FOR THE MIDDLE DISTRICT OF NORTH CAROLINA

BILLY LEE BOLES, JR.,	)	
	)	
Plaintiff,	)	1:13CV00489
v.	)	
	)	
UNITED STATES,	)	
	)	
Defendant.	)	

DEFENDANT UNITED STATES' MOTION TO STRIKE EXPERT REPORTS  
AND EXCLUDE TESTIMONY

NOW COMES the United States of America ("United States"), by and through Ripley Rand, United States Attorney for the Middle District of North Carolina, and moves to strike Plaintiff's four untimely expert reports and to exclude Plaintiff's proposed experts from testifying, and as reason therefor, states:

1. On May 14, 2014, the parties filed a joint report pursuant to Federal Rule of Civil Procedure 26(f) in which they "agree[d] and jointly propose[d] to the Court the following discovery plan," including, among other things, the following expert report deadlines:

- a. From Plaintiffs by September 1, 2014.
- b. From Defendant by November 15, 2014.
- c. Rebuttal Report from Plaintiff by December 30, 2014.

(Joint Rule 26(f) Report, Dkt. 22 at 1, 2.)

2. On May 19, 2014, the Court adopted the parties' joint report with two clarifications, the second of which stated, "the expert-related deadlines in Paragraph 3(a)

of 22 Joint Report shall apply to all expert disclosures required under Federal Rules of Civil Procedure 26(a)(2)(A)-(C), not just reports of so-called retained experts.”

3. Plaintiff did not serve any affirmative expert reports or even disclose the existence of any expert witnesses by his deadline of September 1, 2014.

4. The United States, out of an abundance of caution, served Plaintiff with the reports of three retained experts before its deadline of November 15, 2014.

5. On December 30, 2014, Plaintiff served the United States with four expert reports that purported to be rebuttal reports, but were in fact affirmative expert reports that introduced entirely new facts and theories of recovery into the case. Indeed, three of Plaintiff’s four “rebuttal” reports do not even mention the United States’ experts or their reports, and the fourth provides only one sentence regarding one of the reports, stating, “I did read Dr. Vince Paul’s expert report.” The lengthiest of Plaintiff’s reports is from a psychiatrist and raises issues nowhere to be found in the United States’ expert reports.

6. Plaintiff has not disclosed any explanation for his failure to serve affirmative expert reports or his attempt to serve untimely and prejudicial reports as if they were rebuttal reports.

7. As set forth more fully in the Memorandum of Law filed herewith, Federal Rule of Civil Procedure 16 and case law from this Court and other courts support the striking of Plaintiff’s expert reports and the exclusion of the proposed experts’ testimony. The United States will be prejudiced by allowing Plaintiff to proceed with his four

untimely expert reports, and the Court's deadlines in the scheduling order are necessary for the Court to effectively manage its docket.

WHEREFORE the United States respectfully requests that Plaintiff's four untimely expert reports be stricken and that testimony from his proposed experts be excluded from the trial in this matter.

This the 13th day of January, 2015.

Respectfully submitted,

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United States Attorney

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UNITED STATES,	)	
Defendant.	)	<b><u>CERTIFICATE OF SERVICE</u></b>

I hereby certify that on January 13, 2015, the foregoing motion was electronically filed with the Clerk of the Court using the CM/ECF system, and I hereby certify that the document was served via that system on the following CM/ECF participants:

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and I certify that the document was mailed to the following participants:

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Respectfully submitted,

RIPLEY RAND  
UNITED STATES ATTORNEY

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